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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,139	05/22/2001	Roy F. Quick JR.	010055B1	1058

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QUALCOMM INCORPORATED
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EXAMINER
MOORTHY, ARAVIND K

ART UNIT	PAPER NUMBER
2431	

NOTIFICATION DATE	DELIVERY MODE
01/08/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action *Before the Filing of an Appeal Brief*	**Application No.** 09/863,139	**Applicant(s)** QUICK ET AL.	
	Examiner Aravind K. Moorthy	**Art Unit** 2431	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>19 December 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: <u>1-16 and 18-29</u>.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>17 and 30-32</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

   11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

   <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Christopher A. Revak/
Primary Examiner, Art Unit 2431

Continuation of 11. does NOT place the application in condition for allowance because: On page 14, the applicant argues that Jobst discloses that the primary signature is not generated based on the private key but is merely encrypted using the private key. The examiner respectfully disagrees. The signature is generated using the same RSA algorithm using private key 64. On page 15, the applicant argues that the primary signature of Jobst cannot be based on the secondary signature. The examiner agrees. However, what is claimed is that the secondary signature is received from the mobile station. It is not claimed that the primary signature is based on the secondary signature (i.e. claim 17). On page 15, the applicant argues that the primary signature of Jobst does not authenticate the subscriber. The examiner respectfully disagrees. Jobst discloses that based on the binary code 47 (the code image) and the phone password 45 the phone 1 starts to calculate a second signature 46 (sig2'). The stored Phone Password 45 is put into the beginning and the end of a binary string having the binary code 47 (the code image) of the file received in the middle, For this purpose the binary string is inputted to the very same signature generating algorithm 42 as used by the software provider 33 for calculating the first signature 43 (sig2). When the second signature 46 has been calculated the phone 1 compares this calculated second signature 46 with the first signature 43 received by the response message 41. If these two signatures 43 and 46 fit together that is are identical the phone 1 deems the response message to be coming from an authorized software provider having access to the Master Password 38. Therefor the phone 1 deems the received code image to be authentic and starts to transfer the down loaded code 31 to the MT software. If the authentication has failed the downloaded software would automatically have been deleted. The applicant argues that Jobst does not discloses authenticating a subscriber or user. The examiner respectfully disagrees. Claim 17 recites authenticating a subscriber and not a user. The phone belongs to a user. When the phone gets authenticated, then a user essentially is getting authenticated in the process .